

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X	
THOMAS JERMYN, on behalf of himself	:
and all others similarly situated,	: CIVIL ACTION NO. 08 CV 00214
	:
Plaintiff,	: ECF ACTION
	:
-against-	: DECLARATION OF
	: JENNIFER G. DAUGHERTY
BEST BUY STORES, L.P.,	: IN SUPPORT OF DEFENDANT
	: BEST BUY STORES, L.P.'S
Defendant.	: MEMORANDUM OF LAW
	: IN OPPOSITION TO PLAINTIFF'S
	: MOTION FOR CLASS
	: CERTIFICATION

FILED UNDER SEAL

----- X

Jennifer G. Daugherty, being first duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys representing Defendant Best Buy Stores, L.P. in this case. I make this Declaration in support of Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Class Certification.

2. Attached to this Declaration as Exhibit 1 is a true and correct copy of excerpts of the deposition transcript of Thomas Jermyn.

3. Attached to this Declaration as Exhibit 2 is a true and correct copy of the deposition transcript of Cynthia Cox-Feeney, being filed under seal.

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed in Minneapolis, Minnesota, this 25th day of June, 2008.

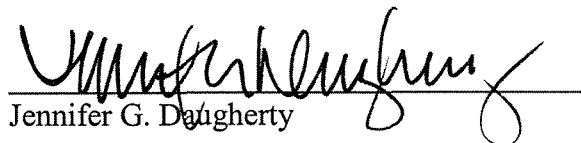

Jennifer G. Daugherty

EXHIBIT NO. 1

THOMAS JERMYN, MAY 2, 2008

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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - - X
5 THOMAS JERMYN, on behalf of himself and
6 all others similarly situated,
7 Plaintiff,

8
9 against,

Docket No.
08 CV 00214

10 BEST BUY STORES, L.P.,

11 Defendant.
12 - - - - - X

13 DATED: May 2, 2008
14 Chestnut Ridge, New York
15 9:10 a.m. - 1:20 p.m.
16 Patrick M. DeGiorgio, Reporter
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DEPOSITION
OF
THOMAS JERMYN

THOMAS JERMYN, MAY 2, 2008

Page 6	Page 8
<p>1 THOMAS JERMYN</p> <p>2 Q. Did that case go to trial?</p> <p>3 A. No.</p> <p>4 Q. Did it settle out of court?</p> <p>5 A. Yes.</p> <p>6 Q. Who was your attorney in that case?</p> <p>7 A. Craig Langer.</p> <p>8 Q. How do you spell that last name?</p> <p>9 A. L-A-N-G-E-R.</p> <p>10 Q. Where is Mr. Langer?</p> <p>11 A. He's in White Plains.</p> <p>12 Q. A firm in White Plains?</p> <p>13 A. Yes.</p> <p>14 Q. Since that time, have you given a statement</p> <p>15 for any type of lawsuit?</p> <p>16 A. No.</p> <p>17 Q. The reason why I asked you if you had your</p> <p>18 deposition taken before is just to go over</p> <p>19 some of the ground rules. Your attorney</p> <p>20 helped me out already here by telling you</p> <p>21 that you have to answer verbally because we</p> <p>22 do have a court reporter here. Okay?</p> <p>23 A. Okay.</p> <p>24 Q. You either need to say yes or no and not</p> <p>25 just shaking your head.</p>	<p>1 THOMAS JERMYN</p> <p>2 A. 300 East 40th Street, Apartment 7N, New</p> <p>3 York, New York 10016.</p> <p>4 Q. How long did you live there?</p> <p>5 A. One year.</p> <p>6 Q. Before that?</p> <p>7 A. 315 East 88th Street, Apartment 5H, ten</p> <p>8 years. Ten, eleven years.</p> <p>9 Q. So you lived at that address for ten or</p> <p>10 eleven years until what year?</p> <p>11 A. I think it was 2005, and then I moved to 300</p> <p>12 East 40th Street and then I moved to where I</p> <p>13 live presently, 320 West 119th Street.</p> <p>14 Q. The address you lived at for ten or eleven</p> <p>15 years, is that where you lived in May 2005?</p> <p>16 A. Yes.</p> <p>17 Q. Could you repeat that address just because I</p> <p>18 didn't get that down?</p> <p>19 A. 300 East 40th Street.</p> <p>20 Q. Have you lived in New York City all your</p> <p>21 life, sir?</p> <p>22 A. No.</p> <p>23 Q. How long have you lived in New York City?</p> <p>24 A. Since 1989.</p> <p>25 Q. Before that, and I'm not asking for the</p>
Page 7	Page 9
<p>1 THOMAS JERMYN</p> <p>2 A. Okay.</p> <p>3 Q. If there's a question that you don't</p> <p>4 understand or I don't make it clear, please</p> <p>5 ask me and I'll rephrase it.</p> <p>6 A. Okay.</p> <p>7 Q. I'll try to wait until you are done</p> <p>8 responding before I bring up another</p> <p>9 question and likewise so we are not talking</p> <p>10 over each other.</p> <p>11 A. Okay.</p> <p>12 Q. Do you understand that you are under oath</p> <p>13 today, sir?</p> <p>14 A. Yes.</p> <p>15 Q. We've already asked for your address. How</p> <p>16 long have you lived at the address you</p> <p>17 provided to the court reporter?</p> <p>18 A. Two years.</p> <p>19 Q. What was the city again?</p> <p>20 A. New York.</p> <p>21 Q. You live in New York City?</p> <p>22 A. Yes.</p> <p>23 Q. Where did you live before that?</p> <p>24 A. New York City, another address.</p> <p>25 Q. What was your previous address?</p>	<p>1 THOMAS JERMYN</p> <p>2 exact street address, but where did you</p> <p>3 live?</p> <p>4 A. I lived in White Plains for three years</p> <p>5 prior to that when I was in the lawsuit. I</p> <p>6 lived in South Carolina for four years prior</p> <p>7 to that in college and I grew up in Dutchess</p> <p>8 County, New York.</p> <p>9 Q. Your date of birth?</p> <p>10 A. 12/27/62.</p> <p>11 Q. Did you meet with your attorney to prepare</p> <p>12 for your deposition today?</p> <p>13 A. Yes.</p> <p>14 Q. By your attorney, I mean Mr. Braunstein who</p> <p>15 is sitting here next to you?</p> <p>16 A. Yes.</p> <p>17 Q. Anyone else present at that meeting?</p> <p>18 A. No.</p> <p>19 Q. When did you meet with him?</p> <p>20 A. This morning. We spoke by telephone and</p> <p>21 communicated by e-mail.</p> <p>22 Q. Of course I'm not looking into the substance</p> <p>23 of those conversations, but how long did you</p> <p>24 meet with Mr. Braunstein this morning?</p> <p>25 A. Fifteen minutes.</p>

3 (Pages 6 to 9)

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THOMAS JERMYN, MAY 2, 2008

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<p>1 THOMAS JERMYN</p> <p>2 Q. With a firm?</p> <p>3 A. Sole practitioner.</p> <p>4 Q. Other than Mr. Plotkin, the other firm that</p> <p>5 you spoke with or counsel at another firm</p> <p>6 was Mr. Braunstein's firm?</p> <p>7 A. Yes.</p> <p>8 Q. When did you first decide that you wanted to</p> <p>9 take legal action against Best Buy?</p> <p>10 A. When I was in the store. When I tried to</p> <p>11 return the camera and see if they would</p> <p>12 honor the Price Match Guarantee.</p> <p>13 Q. What was that date?</p> <p>14 A. May 13th, 2005 -- no, that's when I</p> <p>15 purchased it. May 20th, 2005.</p> <p>16 Q. So these efforts that you've described to</p> <p>17 seek out counsel, did you commence those</p> <p>18 immediately after returning the camera on</p> <p>19 May 20th?</p> <p>20 A. Yes.</p> <p>21 Q. So that -- (interrupted)</p> <p>22 A. Informally. I made a mental note. I said I</p> <p>23 think I want to do something about this. I</p> <p>24 even told them in the store. So I started</p> <p>25 gathering information and things like that,</p>	<p>1 THOMAS JERMYN</p> <p>2 this firm?</p> <p>3 A. By telephone or in person?</p> <p>4 Q. We will start by telephone.</p> <p>5 A. Yes.</p> <p>6 Q. What was the date?</p> <p>7 A. Approximately April of '07.</p> <p>8 Q. Did you call them or did they call you?</p> <p>9 A. I called them.</p> <p>10 Q. Who did you speak with?</p> <p>11 A. Mr. Michael Braunstein.</p> <p>12 Q. When was the first time you met with anyone</p> <p>13 at this firm in person?</p> <p>14 A. It was a few months later. About September</p> <p>15 or October of '07.</p> <p>16 Q. At any time did you see any advertisements</p> <p>17 or soliciting by Mr. Braunstein's firm for</p> <p>18 this type of class action?</p> <p>19 A. No.</p> <p>20 Q. It was purely on your own volition that you</p> <p>21 contacted Mr. Braunstein's firm?</p> <p>22 A. Yes.</p> <p>23 Q. Is the reason why you waited a few years</p> <p>24 after the incident to file this lawsuit was</p> <p>25 because you didn't have counsel to represent</p>
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<p>1 THOMAS JERMYN</p> <p>2 going online, checking out blogs and seeing</p> <p>3 if this was a potential case. Information</p> <p>4 gathering.</p> <p>5 Q. You said you didn't engage counsel until</p> <p>6 mid-2007; is that correct?</p> <p>7 MR. BRAUNSTEIN:</p> <p>8 Object to the form. I think the</p> <p>9 testimony was mid-2007 was also six months</p> <p>10 from today's date or approximately</p> <p>11 thereabouts.</p> <p>12 MS. DAUGHERTY:</p> <p>13 You can object to misstating the</p> <p>14 testimony.</p> <p>15 Q. Tell me what you did say?</p> <p>16 MR. BRAUNSTEIN:</p> <p>17 You can answer over my objection.</p> <p>18 A. Yeah, when I finally sat down with these</p> <p>19 guys I realized they were a good firm and</p> <p>20 they were -- I was going to give it to them</p> <p>21 as soon as I met them.</p> <p>22 MS. DAUGHERTY:</p> <p>23 Q. I'll reask my question. Do you remember the</p> <p>24 first day you met with either Mr.</p> <p>25 Braunstein, Mr. Graifman or anyone else with</p>	<p>1 THOMAS JERMYN</p> <p>2 you?</p> <p>3 A. I was looking around, but I travel a lot</p> <p>4 with my business. I'm down in Florida a</p> <p>5 lot, South Carolina, and I just got caught</p> <p>6 up in things and I put it on the back</p> <p>7 burner. It was waiting on my desk until I</p> <p>8 finally decided to go forward. It was</p> <p>9 something that was on my desk since 2005 and</p> <p>10 I didn't want to put it away until I finally</p> <p>11 met these guys in person. I knew the</p> <p>12 statute of limitations was moving on it too.</p> <p>13 Q. You said you have businesses in Florida and</p> <p>14 South Carolina?</p> <p>15 A. Yes.</p> <p>16 Q. What do you do?</p> <p>17 A. Real estate.</p> <p>18 Q. Do you fly there or drive there on a</p> <p>19 periodic basis?</p> <p>20 A. Monthly basis.</p> <p>21 MR. BRAUNSTEIN:</p> <p>22 Wait for the question to be completed.</p> <p>23 MS. DAUGHERTY:</p> <p>24 Q. Is it a regular practice of yours to travel</p> <p>25 for your business?</p>

6 (Pages 18 to 21)

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THOMAS JERMYN, MAY 2, 2008

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<p>1 THOMAS JERMYN</p> <p>2 you can answer.</p> <p>3 A. Right. Either like I said they bought</p> <p>4 something and then in the interim, the</p> <p>5 statutory period, that they say on their</p> <p>6 either thirty days or fourteen in some</p> <p>7 circumstances, if you find a competitor's</p> <p>8 price and bring it in there and they will</p> <p>9 return it or lower the price with a 10</p> <p>10 percent discount. People that are shopping</p> <p>11 before they bought something and have an</p> <p>12 advertisement on the Best Buy website or</p> <p>13 something, a publication, and they see that</p> <p>14 you can bring an advertisement cheaper</p> <p>15 before they buy it, will they honor it</p> <p>16 there? That's not exactly like mine, like</p> <p>17 my case, but the first instance that I</p> <p>18 mentioned, the people that actually bought</p> <p>19 something are the ones more similar to my</p> <p>20 case.</p> <p>21 Q. Sir, you would agree these websites you look</p> <p>22 at there's a variety of instances relating</p> <p>23 to people going in and trying to get --</p> <p>24 (interrupted)</p> <p>25 A. Either returns or -- sometimes having to do</p>	<p>1 THOMAS JERMYN</p> <p>2 whether it's discretionary of whether they</p> <p>3 will honor the price guarantee or not. One</p> <p>4 of them said that if it was \$10 or \$20 most</p> <p>5 of the time they would, but if it got over a</p> <p>6 certain limit like a hundred dollars they</p> <p>7 wouldn't honor it. That's what it said in</p> <p>8 one of the blogs. One of them mentioned</p> <p>9 having a different website in the store.</p> <p>10 There were a lot of complaints against Best</p> <p>11 Buy, not all exactly like my case. The only</p> <p>12 ones I'm really concerned about are the ones</p> <p>13 similar to mine, people that bought</p> <p>14 something and when they tried to return it</p> <p>15 and get the guarantee pursuant to their</p> <p>16 Price Match Guarantee it wasn't honored.</p> <p>17 Q. When you looked at these blogs, these people</p> <p>18 that wrote in, they described what the</p> <p>19 management told them when they tried to get</p> <p>20 the Price Match Guarantee?</p> <p>21 A. Sometimes. Sometimes they would talk about</p> <p>22 the attitude in the store, like the policy</p> <p>23 of the store manager or the employees how</p> <p>24 they were treated. Sometimes the facts</p> <p>25 weren't the same as mine, but the treatment</p>
Page 35	Page 37
<p>1 THOMAS JERMYN</p> <p>2 with gift cards or buying or anticipation of</p> <p>3 purchasing to see if it will match before</p> <p>4 some -- that some people try to do it</p> <p>5 beforehand, some people wait afterwards, and</p> <p>6 the other ones were somewhat combined</p> <p>7 between the gift cards and rebates and price</p> <p>8 matching and refunds.</p> <p>9 Q. So there were a variety of circumstances?</p> <p>10 A. Correct.</p> <p>11 Q. When you looked at these blogs, did these</p> <p>12 people, whomever was writing the blog, did</p> <p>13 they discuss representations that were made</p> <p>14 in the store to them? Do you want me to</p> <p>15 clarify?</p> <p>16 A. Yes.</p> <p>17 Q. Did they tell what the Best Buy people told</p> <p>18 them? Did they relay what a manager or</p> <p>19 customer service representative told them?</p> <p>20 A. Some cases yes, some cases no.</p> <p>21 Q. There was -- was there a lot of discussion</p> <p>22 on these blogs, I guess the oral</p> <p>23 communications between the Best Buy workers</p> <p>24 and them?</p> <p>25 A. Yeah. It just seemed to me a pattern of</p>	<p>1 THOMAS JERMYN</p> <p>2 of the employees seemed the same. There was</p> <p>3 some connection between all of them in my</p> <p>4 case, but not all identical facts.</p> <p>5 Q. There was a variety of responses by</p> <p>6 management or a variety of conversations</p> <p>7 that these people had with management or</p> <p>8 Best Buy employees; right?</p> <p>9 A. Yes.</p> <p>10 Q. They weren't all exactly the same as yours?</p> <p>11 A. It wasn't so much of the response of the</p> <p>12 Best Buy employees that they were getting</p> <p>13 at, more of the result of what happened and</p> <p>14 how it wasn't what they were advertising.</p> <p>15 Q. So what you are looking at is when you read</p> <p>16 these, what struck you in part was the</p> <p>17 result that these people related?</p> <p>18 A. Yes. It was similar because the people were</p> <p>19 getting no satisfaction and in violation of</p> <p>20 what appeared to be the written policy.</p> <p>21 Q. However, you would agree that these were a</p> <p>22 variety of circumstances, a variety of</p> <p>23 stores; right?</p> <p>24 A. Yes.</p> <p>25 Q. And, in fact, we are not sure that all these</p>

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THOMAS JERMYN, MAY 2, 2008

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<p>1 THOMAS JERMYN</p> <p>2 people were trying to get the benefit of</p> <p>3 Best Buy's Price Match Guarantee?</p> <p>4 A. Right.</p> <p>5 Q. Do you know who wrote these blogs?</p> <p>6 A. No.</p> <p>7 Q. Have you ever tried to contact anybody that</p> <p>8 wrote these blogs?</p> <p>9 A. No.</p> <p>10 Q. Did you ever write a blog?</p> <p>11 A. No.</p> <p>12 Q. Ever write a comment to a blog?</p> <p>13 A. No.</p> <p>14 Q. With respect to these blogs, you simply just</p> <p>15 read them?</p> <p>16 A. Just read them.</p> <p>17 Q. I want to go into the facts of what happened</p> <p>18 in this case, sir. I understand that you</p> <p>19 purchased a camera on May 13th, 2005; is</p> <p>20 that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Why don't you just start at the beginning</p> <p>23 and tell me what happened?</p> <p>24 A. I wanted to buy a Nikon D70 and one of the</p> <p>25 reasons I chose Best Buy was because of the</p>	<p>1 THOMAS JERMYN</p> <p>2 buy it at Best Buy. So I made a printout of</p> <p>3 the advertisement from Tristate, their</p> <p>4 competitor, took it there and then they</p> <p>5 informed me that they wouldn't honor the</p> <p>6 guarantee, they wouldn't reduce the price</p> <p>7 and they would charge me the restocking fee</p> <p>8 if I tried to return it. I figure outside</p> <p>9 the price with the restocking fee from the</p> <p>10 other camera place and it was still 860 plus</p> <p>11 180, it came out to 1,040 as opposed to</p> <p>12 1,199 minus a hundred or 1,099. It was</p> <p>13 still \$50 or less with paying the restocking</p> <p>14 fee. They railroaded me out of the store</p> <p>15 and I tried to get information from them</p> <p>16 saying what is it about this case that</p> <p>17 doesn't fit your guarantee and they wouldn't</p> <p>18 give me an answer. Nobody could give me a</p> <p>19 square answer, so I mentioned that I was an</p> <p>20 attorney and I was going to pursue this case</p> <p>21 and they said fine, go ahead. They didn't</p> <p>22 seem to be worried about that. It almost</p> <p>23 looked like they had dealt with this</p> <p>24 situation many times the way they handled</p> <p>25 it. Like I said, it was very robotic and</p>
Page 39	Page 41
<p>1 THOMAS JERMYN</p> <p>2 Price Match Guarantee. There was a store</p> <p>3 near to where I lived and I went in there</p> <p>4 and bought the camera knowing that they --</p> <p>5 knowing the Price Match Guarantee. I</p> <p>6 figured I would look around in the next</p> <p>7 thirty days or fourteen days and see if</p> <p>8 anybody has it for less, the D70, in the</p> <p>9 meantime. I asked them before I bought it,</p> <p>10 they said no problem. I wasn't aware of</p> <p>11 anybody that had any problems at Best Buy</p> <p>12 prior to that. So a week later walking near</p> <p>13 the store, because I worked in that area and</p> <p>14 walked by it a lot, I happened to walk by</p> <p>15 Tristate Camera which is about three blocks</p> <p>16 away from the Best Buy store and saw the</p> <p>17 camera and asked them how much it was. I</p> <p>18 thought it was 959 before the hundred dollar</p> <p>19 rebate. It was May 20th, so it was within</p> <p>20 the statutory period on the Best Buy</p> <p>21 guarantee. There were no restrictions or no</p> <p>22 fine print because of the type of material.</p> <p>23 They limited it from thirty to fourteen</p> <p>24 days, so I was still within that. I brought</p> <p>25 the camera back to Best Buy fully wanting to</p>	<p>1 THOMAS JERMYN</p> <p>2 there was no listening to what I had to say.</p> <p>3 I would have gladly given the business to</p> <p>4 Best Buy had they lowered the price. I</p> <p>5 tried to reason with the manager of the</p> <p>6 store saying I'm a good customer, I bought</p> <p>7 many things here, why not reward someone who</p> <p>8 is a loyal customer rather than lose a</p> <p>9 customer and they didn't care what I said.</p> <p>10 They just kind of wanted me out of the store</p> <p>11 before I made a scene. I returned the</p> <p>12 camera, bought it at Tristate, paid the</p> <p>13 restocking fee, it was still \$49 less and</p> <p>14 then I started searching around for my --</p> <p>15 looking at my legal remedies. A year and a</p> <p>16 half later I found Graifman's office.</p> <p>17 Q. I believe you said it was \$59 less at one</p> <p>18 point and now you just said \$49 less.</p> <p>19 A. It was 859 after the rebate from Tristate</p> <p>20 and it was 1,099 after the rebate from Best</p> <p>21 Buy. 859 plus 180 for the restocking fee</p> <p>22 came out to be 1,059. So it was still</p> <p>23 cheaper.</p> <p>24 Q. Let's back up here. On May 13th, did you</p> <p>25 have --</p>

11 (Pages 38 to 41)

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THOMAS JERMYN, MAY 2, 2008

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<p>1 THOMAS JERMYN</p> <p>2 B&H. I may have looked at it once or twice</p> <p>3 to see what kind of features it had on it.</p> <p>4 I didn't check the price or anything like</p> <p>5 that.</p> <p>6 MR. BRAUNSTEIN:</p> <p>7 I don't want you to guess. You were</p> <p>8 saying you may have done that. If you think</p> <p>9 you did it or you are pretty sure you did</p> <p>10 it, just tell us in those words. Neither of</p> <p>11 us want you to guess at those answers.</p> <p>12 A. I don't recall.</p> <p>13 MS. DAUGHERTY:</p> <p>14 Q. That's fine. As your attorney said, I'm not</p> <p>15 asking for you to speculate at all. To the</p> <p>16 best of your recollection what you did,</p> <p>17 that's what I want to know.</p> <p>18 A. Okay.</p> <p>19 Q. So you believe that you had looked at a</p> <p>20 couple different stores including B&H and</p> <p>21 Circuit City?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Yes?</p> <p>24 A. Yes.</p> <p>25 Q. Would you say this was in May 2005 as well,</p>	<p>1 THOMAS JERMYN</p> <p>2 that you decided to go to Best Buy to</p> <p>3 purchase this camera on May 13th was because</p> <p>4 you thought they had a reputation for the</p> <p>5 best prices?</p> <p>6 A. Yes.</p> <p>7 Q. Is that in a nutshell what you said?</p> <p>8 A. Yes.</p> <p>9 Q. Is there any other reason why you went to</p> <p>10 Best Buy on May 13th to buy this camera?</p> <p>11 A. Just because it was convenient.</p> <p>12 Q. At that time did you know about Best Buy's</p> <p>13 Price Match Guarantee?</p> <p>14 A. Yes.</p> <p>15 Q. Was that another reason you went to Best</p> <p>16 Buy?</p> <p>17 A. Yes.</p> <p>18 Q. When you went to Best Buy to purchase this</p> <p>19 camera, did you have the specific intention</p> <p>20 of buying the camera and looking around and</p> <p>21 then perhaps trying to get the benefit of</p> <p>22 the guarantee?</p> <p>23 A. Looking back on it, yes.</p> <p>24 MR. BRAUNSTEIN:</p> <p>25 Just in general, wait for her to</p>
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<p>1 THOMAS JERMYN</p> <p>2 but before May 13th?</p> <p>3 A. April, maybe March. If I recall correctly,</p> <p>4 the camera was kind of new at that time.</p> <p>5 The D70 wasn't out that long.</p> <p>6 Q. Did you ever have any intention of</p> <p>7 purchasing the camera at either B&H or</p> <p>8 Circuit City?</p> <p>9 A. I had never bought any camera equipment</p> <p>10 anyplace else in the city except Ken Hansen.</p> <p>11 My original intention was to buy it there.</p> <p>12 I had developed a relationship with Ken</p> <p>13 Hansen himself and salespeople, but for some</p> <p>14 reason either he wasn't in business at that</p> <p>15 time or he was -- I know he moved to Florida</p> <p>16 and came back. One reason or another I</p> <p>17 didn't buy it at Ken Hansen.</p> <p>18 Q. How do you spell that?</p> <p>19 A. Ken H-A-N-S-E-N.</p> <p>20 Q. Does he have a store right now?</p> <p>21 A. I'm not even sure. He's known locally as</p> <p>22 one of the best photo places where you could</p> <p>23 get used gear and a professional shop at his</p> <p>24 store.</p> <p>25 Q. I believe you stated one or the main reasons</p>	<p>1 THOMAS JERMYN</p> <p>2 finish the question. You may know what the</p> <p>3 question is or is going to be, but it's much</p> <p>4 easier for the court reporter. Let her</p> <p>5 finish the question before you answer.</p> <p>6 A. Yes, because I had inquired when I bought</p> <p>7 the camera specifically whether -- what the</p> <p>8 policy was, just in case. I didn't really</p> <p>9 do too much research when it came to price,</p> <p>10 but then I just figured this is a good</p> <p>11 policy as far as the Price Match Guarantee</p> <p>12 even after, so I figured if I'm going to do</p> <p>13 it I better do it quick, like in the first</p> <p>14 week, so I don't have to have this issue,</p> <p>15 this thing that's excluded because on their</p> <p>16 form it says some items have a fourteen-day</p> <p>17 limit. Generally most items are thirty-day,</p> <p>18 but just to be safe I said if I'm going to</p> <p>19 find something I better do it quick so I</p> <p>20 won't have to worry about them --</p> <p>21 (interrupted)</p> <p>22 Q. You did or did not know about the Price</p> <p>23 Match Guarantee before May 13th, 2005?</p> <p>24 A. I did know about the price guarantee.</p> <p>25 Q. That was a factor in your decision to go to</p>

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THOMAS JERMYN, MAY 2, 2008

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<p>1 THOMAS JERMYN</p> <p>2 when I was buying the camera, but when I</p> <p>3 came back that's when their attitude</p> <p>4 changed.</p> <p>5 Q. My question was, what did the employee say</p> <p>6 to you or what was the communication when</p> <p>7 you got to the camera shop area? Let's</p> <p>8 start with this, it would be easier with the</p> <p>9 question I asked you. You go over to the</p> <p>10 camera area -- (interrupted)</p> <p>11 A. Do you have the D70 in stock?</p> <p>12 Q. That's all you asked them?</p> <p>13 A. Yes. They said yes, we do.</p> <p>14 Q. You said something like let me take a look</p> <p>15 at it?</p> <p>16 A. I didn't even open it. It's all shrink</p> <p>17 wrapped and everything. They had it in</p> <p>18 stock and I took it. Before I took it I</p> <p>19 wanted to make sure what the policy was as</p> <p>20 far as returning it.</p> <p>21 Q. Okay.</p> <p>22 A. I figured I might see these people within</p> <p>23 the next thirty days. I think if I</p> <p>24 mentioned it beforehand they would remember</p> <p>25 me if I did come back. They assured me</p>	<p>1 THOMAS JERMYN</p> <p>2 Q. How about the features, did you ask any</p> <p>3 questions?</p> <p>4 A. No. You can tell whether it's worth your</p> <p>5 time or not if they know what they are</p> <p>6 talking about. I knew what I was getting</p> <p>7 and they weren't going to help me or</p> <p>8 persuade me any more than what I already</p> <p>9 knew.</p> <p>10 Q. You said you never took the camera out of</p> <p>11 the box when you were at the store?</p> <p>12 A. No.</p> <p>13 Q. Did you look at the display model?</p> <p>14 A. Yeah. They have it chained with the lock on</p> <p>15 it. You can pick it up. You can't use it,</p> <p>16 it's not -- the battery is not charged and</p> <p>17 there's no card in there. You can feel how</p> <p>18 it feels in your hand, look through it.</p> <p>19 Q. In addition to the substantive questions, if</p> <p>20 any, that you may have asked about the</p> <p>21 camera, you said you asked about a rebate</p> <p>22 did you say?</p> <p>23 A. Yes.</p> <p>24 Q. Tell me about this rebate?</p> <p>25 A. Nikon had a hundred dollar rebate on the</p>
Page 55	Page 57
<p>1 THOMAS JERMYN</p> <p>2 quickly that there would be no problem if it</p> <p>3 was within the thirty days.</p> <p>4 Q. So I appreciate the fact that you have a lot</p> <p>5 of camera experience and therefore you did</p> <p>6 not ask any questions specifically about the</p> <p>7 camera; correct?</p> <p>8 A. I may have, but I quickly realized they</p> <p>9 didn't know what they were talking about.</p> <p>10 You don't go into a store like that looking</p> <p>11 for finer points of cameras or things like</p> <p>12 that. I've known that from past experience.</p> <p>13 Maybe TVs or stereos, but when it comes to</p> <p>14 cameras, maybe the low end they may</p> <p>15 understand better, but when it comes to the</p> <p>16 high end, it's technical things. Unless you</p> <p>17 are a photographer you are not going to know</p> <p>18 that unless you use the camera every day.</p> <p>19 The features on the camera are pretty</p> <p>20 technical.</p> <p>21 Q. You went up to the counter, they said yes,</p> <p>22 we have the camera in stock, they gave it to</p> <p>23 you, you maybe would have asked questions</p> <p>24 about the features?</p> <p>25 A. And the rebate.</p>	<p>1 THOMAS JERMYN</p> <p>2 camera. I wanted to make sure I got the</p> <p>3 right receipt and how soon I had to send it</p> <p>4 in. They printed me up a receipt.</p> <p>5 Q. Where did they print up the rebate receipt?</p> <p>6 A. At the Best Buy.</p> <p>7 Q. Is that when you purchased the camera, going</p> <p>8 through the checkout line?</p> <p>9 A. Yes. It all comes out at the same time.</p> <p>10 Q. When you spoke with the person, we will call</p> <p>11 that person the camera salesman, the person</p> <p>12 that sold you the camera itself, not the</p> <p>13 other person -- they were two different</p> <p>14 people?</p> <p>15 A. Yes. Well, I don't recall to tell you the</p> <p>16 truth. I don't know whether the person</p> <p>17 followed me up to the register or you go to</p> <p>18 the front. I'm not sure whether it was the</p> <p>19 same person or not.</p> <p>20 Q. Fair enough. We will say the camera</p> <p>21 salesman who I'm referring to as the</p> <p>22 salesman that got the camera out of the</p> <p>23 glass case for you. In addition to asking</p> <p>24 about the rebate, did you ask that person</p> <p>25 about the Price Match Guarantee?</p>

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THOMAS JERMYN, MAY 2, 2008

Page 62	Page 64
<p>1 THOMAS JERMYN</p> <p>2 Store on West Canal Street. There's a lot</p> <p>3 of retail electronic dealers in New York</p> <p>4 that advertise low prices, you can get a</p> <p>5 great market camera, no warranty. Just</p> <p>6 assuming by going to Best Buy you are going</p> <p>7 to get the best price or something better.</p> <p>8 MS. DAUGHERTY:</p> <p>9 Read back the question.</p> <p>10</p> <p>11 (QUESTION REPEATED BY REPORTER)</p> <p>12</p> <p>13 A. Which person?</p> <p>14 MR. BRAUNSTEIN:</p> <p>15 Just for context, correct me if you</p> <p>16 think I'm wrong, we are talking about at the</p> <p>17 checkout line and talking about the Price</p> <p>18 Match Guarantee?</p> <p>19 MS. DAUGHERTY:</p> <p>20 That's correct.</p> <p>21 Q. What did you say to that person?</p> <p>22 A. Will you honor the Price Match Guarantee?</p> <p>23 Is there anything I should know about this</p> <p>24 that is not shown on the front of this page.</p> <p>25 I remember seeing an asterisks on there</p>	<p>1 THOMAS JERMYN</p> <p>2 like?</p> <p>3 A. No.</p> <p>4 Q. Do you remember how old this person was?</p> <p>5 A. I just remember kind of thinking like high</p> <p>6 school age woman, black.</p> <p>7 Q. Black woman?</p> <p>8 A. Yes.</p> <p>9 Q. High school age?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 A. Nineteen, twenty, twenty-one.</p> <p>13 Q. So you are fairly certain neither of these</p> <p>14 people that we discussed so far were</p> <p>15 management level?</p> <p>16 A. Yes, I'm pretty certain. Nobody made a big</p> <p>17 impression on me. I can't say whether it</p> <p>18 was the same people when I went back. It</p> <p>19 wasn't like -- (interrupted)</p> <p>20 MR. BRAUNSTEIN:</p> <p>21 We will get to that.</p> <p>22 MS. DAUGHERTY:</p> <p>23 Q. You said that you saw on the front of the</p> <p>24 page something about the Price Match</p> <p>25 Guarantee. Do you remember saying that a</p>
Page 63	Page 65
<p>1 THOMAS JERMYN</p> <p>2 about the days. They said don't worry about</p> <p>3 it, as long as it's within thirty days. I</p> <p>4 just assumed the asterisks mentioned</p> <p>5 something. I made a mental note at the</p> <p>6 time, make sure if you do something it's</p> <p>7 within fourteen days to avoid any problem</p> <p>8 down the road.</p> <p>9 Q. This person that you actually physically</p> <p>10 purchased a camera from in the checkout</p> <p>11 line, was that a store clerk, manager,</p> <p>12 assistant manager?</p> <p>13 A. They are all store clerks. No manager until</p> <p>14 the second time I went in.</p> <p>15 Q. Was that a male or female?</p> <p>16 A. I think it was female, the person at the</p> <p>17 checkout counter and a male that said you</p> <p>18 want this camera.</p> <p>19 Q. So the first person in the camera area was a</p> <p>20 male?</p> <p>21 A. Yes.</p> <p>22 Q. Second person was a female when you actually</p> <p>23 paid with your credit card?</p> <p>24 A. Yes. American Express.</p> <p>25 Q. Do you remember what this person looked</p>	<p>1 THOMAS JERMYN</p> <p>2 minute ago?</p> <p>3 A. Yeah. There was like some asterisks on</p> <p>4 there and thinking there has to be some fine</p> <p>5 print on the back, something on the bottom.</p> <p>6 It says the time period was the main thing I</p> <p>7 was worried about, thirty days. There's</p> <p>8 like an asterisks that says fourteen days on</p> <p>9 some items. It doesn't specify what they</p> <p>10 are, so I was thinking in that case if it's</p> <p>11 vague I'm going to assume that they mean</p> <p>12 cameras, so that's basically what I meant.</p> <p>13 Q. We have it on the record about everything</p> <p>14 you talked about with regard to the</p> <p>15 asterisks, I'll ask you about that later if</p> <p>16 I want to know more specifically about that.</p> <p>17 When you say the front of the page, are you</p> <p>18 referring to the Price Match Policy?</p> <p>19 A. Yes. The reason I said the front of the</p> <p>20 page was it was actually translated on the</p> <p>21 back. Spanish on the back, English on the</p> <p>22 front. I remember looking on it and saying</p> <p>23 maybe the back was fine print or conditions</p> <p>24 for the front, but it was just the same</p> <p>25 thing in Spanish.</p>

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<p>1 THOMAS JERMYN</p> <p>2 MS. DAUGHERTY:</p> <p>3 For the record as well, this was asked</p> <p>4 for in our document requests specifically.</p> <p>5 Best Buy is entitled to this document and</p> <p>6 the photocopy of the backside.</p> <p>7</p> <p>8 (REQUESTED INFORMATION HERE)</p> <p>9</p> <p>10 MR. BRAUNSTEIN:</p> <p>11 Okay.</p> <p>12 MS. DAUGHERTY:</p> <p>13 We won't be following up in writing,</p> <p>14 you can take a look at that, it's in the</p> <p>15 document request.</p> <p>16 Q. Now we are talking to the salesgirl, you are</p> <p>17 at the checkout counter. What did you say</p> <p>18 to her about the Price Match Policy, if</p> <p>19 anything?</p> <p>20 A. I think I was -- I think I had discussed it</p> <p>21 with the salesman and the salesperson just</p> <p>22 ran my credit card.</p> <p>23 Q. Maybe this could be my inaccuracy. I</p> <p>24 thought you weren't sure or you didn't think</p> <p>25 you spoke to the camera salesperson about</p>	<p>1 THOMAS JERMYN</p> <p>2 A. No. Like I told you before, I was used to</p> <p>3 buying cameras -- (interrupted)</p> <p>4 MR. BRAUNSTEIN:</p> <p>5 Listen to the question and answer the</p> <p>6 question.</p> <p>7 A. Where I could bring them back, so I just</p> <p>8 wanted to make sure a quick conversation</p> <p>9 whether I could bring it back.</p> <p>10 MS. DAUGHERTY:</p> <p>11 Q. You said can I bring it back?</p> <p>12 A. Yes.</p> <p>13 Q. You weren't asking in the context of just to</p> <p>14 return it, you were asking could you bring</p> <p>15 it back to get the benefit of the Price</p> <p>16 Match Guarantee?</p> <p>17 A. Yes.</p> <p>18 Q. Did you make that clear when you said that</p> <p>19 to the person in the checkout line?</p> <p>20 A. I don't recall.</p> <p>21 Q. So it's possible that that person could have</p> <p>22 thought you were maybe talking about a</p> <p>23 return policy?</p> <p>24 MR. BRAUNSTEIN:</p> <p>25 Objection to the form. You can answer</p>
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<p>1 THOMAS JERMYN</p> <p>2 it, but you may have.</p> <p>3 A. I'm not sure whether it was him or the woman</p> <p>4 who -- I remember talking to them and just</p> <p>5 making sure it was -- I had the right to</p> <p>6 bring it back and bring in a competitor's ad</p> <p>7 or whatever.</p> <p>8 Q. You don't recall whether it was the camera</p> <p>9 salesperson or the checkout woman?</p> <p>10 A. No. I'm not sure if it was one person who</p> <p>11 did both or if I'm getting it confused at</p> <p>12 other times with other stores. I don't</p> <p>13 remember what the store was like at that</p> <p>14 time as opposed to the next time I went.</p> <p>15 Q. It's true when you discussed the Price Match</p> <p>16 Policy with somebody on May 13th, 2005 it</p> <p>17 was with a store clerk, not a store manager?</p> <p>18 A. Yes.</p> <p>19 Q. It's true you do specifically remember</p> <p>20 discussing the Price Match Policy in some</p> <p>21 form with someone at the store on May 13th?</p> <p>22 A. Yes.</p> <p>23 Q. I know you said you asked about the policy.</p> <p>24 Specifically can you tell me anything else</p> <p>25 that you asked?</p>	<p>1 THOMAS JERMYN</p> <p>2 over objection.</p> <p>3 A. It could, yes.</p> <p>4 MS. DAUGHERTY:</p> <p>5 Q. Or that person could think that in asking if</p> <p>6 you would bring it back you were talking</p> <p>7 about bringing it back for a number of other</p> <p>8 Best Buy policies?</p> <p>9 MR. BRAUNSTEIN:</p> <p>10 Objection to the reason you are</p> <p>11 speculating what the other person would</p> <p>12 think, but you can answer.</p> <p>13 A. I don't understand the question.</p> <p>14 MS. DAUGHERTY:</p> <p>15 Q. The other person could think when you --</p> <p>16 when you ask could I bring it back, it could</p> <p>17 be for a number of reasons; right?</p> <p>18 MR. BRAUNSTEIN:</p> <p>19 Same objection. You can answer.</p> <p>20 A. Sure.</p> <p>21 MS. DAUGHERTY:</p> <p>22 Q. Not necessarily the Price Match Guarantee?</p> <p>23 A. Right. I could bring it back for any</p> <p>24 reason, if I didn't like it, if it didn't</p> <p>25 work well, that I could return it for any</p>

20 (Pages 74 to 77)

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<p>1 THOMAS JERMYN</p> <p>2 salesman. They go to the clinics that the</p> <p>3 camera companies put on. You are better off</p> <p>4 buying it at a place like that than at a</p> <p>5 commodities place. You get better service.</p> <p>6 Sometimes there's problems. That's why I</p> <p>7 bought all my equipment at Ken Hansen</p> <p>8 before. They will buy back the equipment</p> <p>9 too.</p> <p>10 Q. At the time when you went into Best Buy on</p> <p>11 May 13th, 2005, did you have the intent to</p> <p>12 specifically go to Tristate to try to find</p> <p>13 the same camera?</p> <p>14 A. No. I would have gone anywhere.</p> <p>15 Q. But you did have the intent to shop around?</p> <p>16 A. Yes.</p> <p>17 Q. At that point you didn't know that I'm going</p> <p>18 to Tristate next?</p> <p>19 A. Yes.</p> <p>20 Q. Had you ever been into Tristate before</p> <p>21 purchasing -- (interrupted)</p> <p>22 A. Yes.</p> <p>23 Q. -- the camera?</p> <p>24 A. Yes.</p> <p>25 Q. Tell me after you left Best Buy, where did</p>	<p>1 THOMAS JERMYN</p> <p>2 Q. If you look in the lower right-hand corner,</p> <p>3 it looks like a date is imprinted on here</p> <p>4 5/19/05. Do you see that?</p> <p>5 A. Yes. It's also on the top left too.</p> <p>6 Q. To the best of your recollection, was the</p> <p>7 first time that you saw this advertisement</p> <p>8 online May 19th, 2005?</p> <p>9 A. I'm not sure, because that might have been</p> <p>10 the day I printed it. I'm not sure if I got</p> <p>11 it May 14th, May 13th. I'm not exactly</p> <p>12 sure. This was when I printed it and I</p> <p>13 printed it so I could take it to the store.</p> <p>14 Q. In any event, you printed it on May 19th,</p> <p>15 2005?</p> <p>16 A. Yes.</p> <p>17 Q. You look at the bottom right-hand corner, it</p> <p>18 looks like the time that you printed it off</p> <p>19 was cut off. Do you see that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Yes?</p> <p>22 A. Yes.</p> <p>23 Q. Looks to me like the first number could be a</p> <p>24 4. Do you have any idea what the first</p> <p>25 number is or when you printed it off would</p>
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<p>1 THOMAS JERMYN</p> <p>2 you shop around?</p> <p>3 A. Probably online. May have looked in a store</p> <p>4 or two.</p> <p>5 Q. What stores do you think you looked in?</p> <p>6 A. Probably B&H would be the first one and</p> <p>7 maybe looked online. I think I looked in</p> <p>8 the back of Peterson's Photography. Some of</p> <p>9 the magazines have camera distributors</p> <p>10 and/or advertisements in the back.</p> <p>11 Q. This was between the date of your purchase,</p> <p>12 May 13th, and the date of the return, May</p> <p>13 20th?</p> <p>14 A. Yes.</p> <p>15 Q. Showing you what has been marked as</p> <p>16 Defendant's Exhibit B.</p> <p>17 (Document submitted)</p> <p>18 A. Okay.</p> <p>19 Q. Have you had a chance to look at it?</p> <p>20 A. Yes.</p> <p>21 Q. What is that document?</p> <p>22 A. This was the printout from a computer ad</p> <p>23 that Tristate Cameras had at the time I</p> <p>24 purchased, that I took a copy of this over</p> <p>25 to Best Buy.</p>	<p>1 THOMAS JERMYN</p> <p>2 be a fairer question?</p> <p>3 A. 4:30 in the afternoon.</p> <p>4 Q. Now, had you ever been into the Tristate</p> <p>5 store before May 19th, 2005?</p> <p>6 A. Yes.</p> <p>7 Q. When had you first gone into Tristate?</p> <p>8 A. Maybe five years earlier. They are a</p> <p>9 well-known store.</p> <p>10 Q. In New York?</p> <p>11 A. Yes.</p> <p>12 Q. You maybe went in five years earlier for an</p> <p>13 unrelated reason?</p> <p>14 A. Yes. It's the kind of store that you are</p> <p>15 walking around and you may want to go in and</p> <p>16 see if they have a good deal on lenses or</p> <p>17 bags or whatever. They are a reputable</p> <p>18 store.</p> <p>19 Q. At the time you printed out this</p> <p>20 advertisement on May 19th, 2005, had you</p> <p>21 been in the Tristate store within the prior</p> <p>22 three weeks?</p> <p>23 A. No, I don't think so, because I really would</p> <p>24 have looked and gotten the price on this.</p> <p>25 It was only by mistake thinking that Best</p>

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THOMAS JERMYN, MAY 2, 2008

<p style="text-align: right;">Page 86</p> <p>1 THOMAS JERMYN</p> <p>2 Buy was selling it -- (interrupted)</p> <p>3 MR. BRAUNSTEIN:</p> <p>4 Listen to the question and answer the</p> <p>5 question.</p> <p>6 A. No, I hadn't. I would have otherwise never</p> <p>7 gone to Best Buy.</p> <p>8 MS. DAUGHERTY:</p> <p>9 Q. After you purchased the camera on May 13th,</p> <p>10 you had not been inside the Tristate store</p> <p>11 before you printed it up? This I mean</p> <p>12 Exhibit B.</p> <p>13 MR. BRAUNSTEIN:</p> <p>14 I'm not sure I understand the</p> <p>15 question. Read it back.</p> <p>16</p> <p>17 (QUESTION REPEATED BY REPORTER)</p> <p>18</p> <p>19 MS. DAUGHERTY:</p> <p>20 Q. There's no objection on the record, so did</p> <p>21 you understand my question?</p> <p>22 A. Yes.</p> <p>23 Q. Your answer was?</p> <p>24 A. No.</p> <p>25 Q. When you found this advertisement, you</p>	<p style="text-align: right;">Page 88</p> <p>1 THOMAS JERMYN</p> <p>2 price was and find out what their price was.</p> <p>3 Q. I think your testimony is a little</p> <p>4 inconsistent. It could be just bad</p> <p>5 questions. Just to clear everything up,</p> <p>6 from the time you purchased the camera at</p> <p>7 Best Buy on May 13th, 2005, when was the</p> <p>8 first time you went into Tristate?</p> <p>9 A. I thought you were talking about prior to</p> <p>10 May 13th.</p> <p>11 Q. That's all right.</p> <p>12 A. The first time may have been -- I'm not</p> <p>13 exactly sure of the dates, but probably two</p> <p>14 or three days afterwards.</p> <p>15 Q. You went into Tristate -- (interrupted)</p> <p>16 A. I knew the clock was running --</p> <p>17 (interrupted)</p> <p>18 Q. Let me finish the question. I just want you</p> <p>19 to answer the questions that I ask. At the</p> <p>20 time --</p> <p>21 MS. DAUGHERTY:</p> <p>22 Strike that.</p> <p>23 Q. You purchased the Best Buy camera on May</p> <p>24 13th. You went to Tristate between that</p> <p>25 time and May 19th when you printed this out;</p>
<p style="text-align: right;">Page 87</p> <p>1 THOMAS JERMYN</p> <p>2 printed it out; right?</p> <p>3 A. Yes.</p> <p>4 Q. And you went back to Best Buy the next day;</p> <p>5 is that right?</p> <p>6 A. Yes.</p> <p>7 Q. May 20th?</p> <p>8 A. Yes.</p> <p>9 Q. You went to Best Buy before you actually</p> <p>10 went into the Tristate store; right?</p> <p>11 A. Yes.</p> <p>12 Q. Did you ever go into the Tristate store</p> <p>13 before returning the camera at Best Buy to</p> <p>14 see if the Tristate store would honor this</p> <p>15 ad?</p> <p>16 A. Of course. You're asking between whether</p> <p>17 the 13th and 20th I went into Tristate to</p> <p>18 find out what the price was? Yeah, I did.</p> <p>19 I found out that the price was this</p> <p>20 because -- I went in the store first and</p> <p>21 then I may have gone in there on like the</p> <p>22 17th or 16th and then realized I had to get</p> <p>23 something in writing because, you know, they</p> <p>24 wanted this at Best Buy. I printed it up</p> <p>25 and went in. I wanted to find out what the</p>	<p style="text-align: right;">Page 89</p> <p>1 THOMAS JERMYN</p> <p>2 is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. You went into Tristate for the purpose of</p> <p>5 seeing if they had the same camera at a</p> <p>6 lower price?</p> <p>7 A. Yes.</p> <p>8 Q. At some time after you went into the</p> <p>9 Tristate store you printed this online?</p> <p>10 A. Yes.</p> <p>11 Q. And is this the exact same price that was</p> <p>12 offered in the store, the Tristate store?</p> <p>13 A. Yes.</p> <p>14 Q. When you were in Tristate, between May 13th</p> <p>15 and May 19th, did you specifically ask</p> <p>16 Tristate if they had a website that offered</p> <p>17 the same prices?</p> <p>18 A. No. I went in there shopping for the price</p> <p>19 and then I got a quote from the guy and then</p> <p>20 I said let me make sure you have that -- no.</p> <p>21 I think I might have gone back to Best Buy</p> <p>22 and they said you have to have it in writing</p> <p>23 or just print it up, if it's not in a</p> <p>24 publication that's mailed out or given out,</p> <p>25 print up the page on their website that</p>

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<p>1 THOMAS JERMYN</p> <p>2 shows what you are telling me and then I did</p> <p>3 and then they still wouldn't honor it.</p> <p>4 Q. Okay.</p> <p>5 A. When I went in there on the 20th.</p> <p>6 MR. BRAUNSTEIN:</p> <p>7 Listen to the questions and answer the</p> <p>8 questions.</p> <p>9 MS. DAUGHERTY:</p> <p>10 Q. When did you go into Best Buy next after May</p> <p>11 13th, 2005?</p> <p>12 A. Probably on the 18th or maybe on the 19th.</p> <p>13 Q. Let's say you went in on the 18th or 19th.</p> <p>14 You had already been in the Tristate store?</p> <p>15 A. Yes.</p> <p>16 Q. You saw that they offered the same camera at</p> <p>17 a different price?</p> <p>18 A. Yes.</p> <p>19 Q. At the time you went into Best Buy on May</p> <p>20 18th or 19th it's true you had not yet</p> <p>21 printed this off online?</p> <p>22 A. Yes.</p> <p>23 Q. You went into Best Buy. What did you do?</p> <p>24 A. I said your guarantee says that you will</p> <p>25 honor lower prices or match lower prices</p>	<p>1 THOMAS JERMYN</p> <p>2 Q. He or she, do you remember?</p> <p>3 A. I think it was a lady. She said bring it in</p> <p>4 in writing.</p> <p>5 Q. You are sure this lady at the customer</p> <p>6 service desk was not a manager?</p> <p>7 A. I'm not sure.</p> <p>8 Q. In any event -- (interrupted)</p> <p>9 A. I don't know how many managers they have.</p> <p>10 On the 20th when someone came out it was a</p> <p>11 man when I asked to see a manager.</p> <p>12 Q. In any event, on the 18th or 19th you did</p> <p>13 not ask to see a manager?</p> <p>14 A. No.</p> <p>15 Q. You spoke with the person that was at the</p> <p>16 customer service desk?</p> <p>17 A. Yes.</p> <p>18 Q. She said you need to get something in</p> <p>19 writing to show what the price is at</p> <p>20 Tristate?</p> <p>21 A. Yes.</p> <p>22 Q. You left the store?</p> <p>23 A. Yes.</p> <p>24 Q. And then you went to your home; is that</p> <p>25 right, and printed this out?</p>
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<p>1 THOMAS JERMYN</p> <p>2 with the 10 percent -- and add 10 percent</p> <p>3 onto the lowest price -- I mean 10 percent</p> <p>4 discount to the lowest price. Here is what</p> <p>5 I got at Tristate Cameras -- no, around the</p> <p>6 corner they have it for less. They said you</p> <p>7 have to get something in writing. I think I</p> <p>8 went back and got it in writing and had to</p> <p>9 go back again.</p> <p>10 Q. Who did you talk to when you went into the</p> <p>11 Best Buy store on May 18th or 19th?</p> <p>12 A. It wasn't the manager. I remember seeing</p> <p>13 the manager one time only, so it was just</p> <p>14 somebody at customer service.</p> <p>15 Q. Did you go straight to the customer service</p> <p>16 desk?</p> <p>17 A. I think so.</p> <p>18 Q. You walked into the Best Buy on the 18th or</p> <p>19 19th and went to the customer service desk;</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. You said I purchased a camera here the other</p> <p>23 day, around the corner at Tristate they have</p> <p>24 a lower price?</p> <p>25 A. Yes.</p>	<p>1 THOMAS JERMYN</p> <p>2 A. Yes.</p> <p>3 Q. When I'm talking about this, I mean Exhibit</p> <p>4 B, the Tristate advertisement?</p> <p>5 A. Yes.</p> <p>6 Q. Did you go to Tristate again between Best</p> <p>7 Buy on May 18th or 19th and when you</p> <p>8 actually purchased a Tristate Camera?</p> <p>9 A. No.</p> <p>10 Q. Just to be clear, when you went into</p> <p>11 Tristate before May 18th or 19th, but after</p> <p>12 you purchased the Best Buy camera, did you</p> <p>13 specifically ask Tristate if they had the</p> <p>14 same prices online that they had in the</p> <p>15 brick and mortar store or did you not know?</p> <p>16 A. I don't know. I don't recall.</p> <p>17 Q. You don't specifically remember asking them</p> <p>18 if I go on your website will you have the</p> <p>19 same prices?</p> <p>20 A. I think I did. I remember the guy I spoke</p> <p>21 about, I remember the salesperson there, he</p> <p>22 said yeah, you know, we have the same</p> <p>23 prices.</p> <p>24 Q. I don't want you to guess. If you don't</p> <p>25 recall, that's fine.</p>

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<p>1 THOMAS JERMYN</p> <p>2 A. I do recall. I said give me your flier or</p> <p>3 something.</p> <p>4 Q. So then after May 18th or 19th you went in,</p> <p>5 printed this off, which is Exhibit B, and</p> <p>6 then your first step was to go back to Best</p> <p>7 Buy or to go to Tristate?</p> <p>8 A. Back to Best Buy.</p> <p>9 Q. You went back on May 20th?</p> <p>10 A. Yes.</p> <p>11 Q. You walked in the store?</p> <p>12 A. Yes.</p> <p>13 Q. You had your camera in your bag?</p> <p>14 A. All the original packaging, receipts, bags</p> <p>15 and everything and this in my hand</p> <p>16 (indicating).</p> <p>17 Q. Did you open the camera box?</p> <p>18 A. Yes.</p> <p>19 Q. Did you get the camera out?</p> <p>20 A. Yes.</p> <p>21 Q. Did you -- (interrupted)</p> <p>22 A. I used the camera.</p> <p>23 Q. You used the camera?</p> <p>24 A. Yes. It worked fine.</p> <p>25 Q. The camera worked fine?</p>	<p>1 THOMAS JERMYN</p> <p>2 questions I'm going to ask, but just answer</p> <p>3 the question that I ask. You went straight</p> <p>4 to the customer service desk?</p> <p>5 A. Yes.</p> <p>6 Q. Who was working back there?</p> <p>7 A. There were a few people standing there, but</p> <p>8 right away they just told me no, we are not</p> <p>9 taking that back. I asked them -- I started</p> <p>10 having a discussion with them.</p> <p>11 Q. Now, you are anticipating my question again.</p> <p>12 All I want to know is do you remember who</p> <p>13 the person was that was working that day,</p> <p>14 yes or no?</p> <p>15 A. No.</p> <p>16 Q. Was it the same person that was working on</p> <p>17 May 18th or 19th?</p> <p>18 A. I don't recall.</p> <p>19 Q. In fact, you did speak to somebody then,</p> <p>20 that one person behind the customer service</p> <p>21 desk?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall whether or not this was a male</p> <p>24 or female?</p> <p>25 A. Female.</p>
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<p>1 THOMAS JERMYN</p> <p>2 A. Yes. It worked fine, there was nothing</p> <p>3 wrong with it.</p> <p>4 Q. There was nothing defective?</p> <p>5 A. No.</p> <p>6 Q. You went back into Best Buy?</p> <p>7 A. And then I tried to show them what was going</p> <p>8 on. I figured it was quick in, quick out.</p> <p>9 I wanted to keep the camera. Just honor</p> <p>10 this price, check my receipt, honor that</p> <p>11 price. I don't care about the extra 10</p> <p>12 percent. Do what you say you are going to</p> <p>13 do. Then they said -- then the stonewalling</p> <p>14 process started. I started detecting a</p> <p>15 little change in their demeanor.</p> <p>16 Q. I'll ask you about that. Let's go back.</p> <p>17 You went in the Best Buy store with the</p> <p>18 camera in the bag. Did you go over to the</p> <p>19 customer service desk right away?</p> <p>20 A. Right away. That's when I noticed something</p> <p>21 was funny.</p> <p>22 MR. BRAUNSTEIN:</p> <p>23 Listen to the question.</p> <p>24 MS. DAUGHERTY:</p> <p>25 Q. Sir, I know that you know what I'm -- what</p>	<p>1 THOMAS JERMYN</p> <p>2 Q. Do you know how old she was?</p> <p>3 A. Early 20s.</p> <p>4 Q. Do you know whether or not she was a</p> <p>5 manager?</p> <p>6 A. She wasn't.</p> <p>7 Q. I just want to know, what did you say to</p> <p>8 this person?</p> <p>9 A. I want to return this or I want to see if</p> <p>10 you will honor the Price Match Guarantee.</p> <p>11 Q. And you had a copy of Exhibit B in your</p> <p>12 hand?</p> <p>13 A. Yes. And the receipt and the camera.</p> <p>14 Q. What was the first thing she said to you?</p> <p>15 A. We can't honor this. We can't take this</p> <p>16 back.</p> <p>17 Q. Why?</p> <p>18 A. She didn't give me a reason. I said give me</p> <p>19 a reason. Where -- I think I had a copy of</p> <p>20 the Best Buy Price Match Guarantee in my</p> <p>21 hand. I'm pointing to it asking where on it</p> <p>22 does it say, show me where. After awhile</p> <p>23 they said -- (interrupted)</p> <p>24 MR. BRAUNSTEIN:</p> <p>25 Just talk about this conversation, one</p>

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<p>1 THOMAS JERMYN</p> <p>2 thing at a time.</p> <p>3 MS. DAUGHERTY:</p> <p>4 Q. So you said you had a copy of the Price</p> <p>5 Match Policy in your hand and you said you</p> <p>6 want the benefit of the Price Match</p> <p>7 Guarantee?</p> <p>8 A. Yes.</p> <p>9 Q. Where did you get a copy of the Price Match</p> <p>10 Policy?</p> <p>11 A. It was what I had, like I said, I picked it</p> <p>12 up from the store. I think it was in</p> <p>13 Dutchess County.</p> <p>14 Q. So the copy that you had at home?</p> <p>15 A. Yes.</p> <p>16 Q. She said no and she didn't give you a reason</p> <p>17 why initially?</p> <p>18 A. Right.</p> <p>19 Q. You asked for an explanation?</p> <p>20 A. Yes.</p> <p>21 Q. What did she say?</p> <p>22 A. I said show me on this form where the</p> <p>23 exception is that you are not taking this</p> <p>24 back. I don't see it. I'm fulfilling all</p> <p>25 the conditions, it's been fourteen days</p>	<p>1 THOMAS JERMYN</p> <p>2 Q. You said get a manager?</p> <p>3 A. Yes.</p> <p>4 Q. What did the manager say?</p> <p>5 A. He categorically denied it, backing her up.</p> <p>6 I think I got angry -- (interrupted)</p> <p>7 MR. BRAUNSTEIN:</p> <p>8 Just what he said.</p> <p>9 A. He said no. I answered back why? Look on</p> <p>10 the form. You should honor this. He kept</p> <p>11 saying no. He just kept saying no.</p> <p>12 MS. DAUGHERTY:</p> <p>13 Q. The manager comes over to you. You say here</p> <p>14 is everything. Here is the camera, the</p> <p>15 receipt, the advertisement, match this price</p> <p>16 and he said to you we can't?</p> <p>17 A. Correct. That's all he said.</p> <p>18 Q. You asked for an explanation?</p> <p>19 A. Only like the only thing he could tell me</p> <p>20 was we only match major chains.</p> <p>21 Q. That's what he told you?</p> <p>22 A. I said where does it say major chains in</p> <p>23 here? That to me was an admission of guilt</p> <p>24 right there. As soon as he said that, I</p> <p>25 said fine, okay, major change, I don't see</p>
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<p>1 THOMAS JERMYN</p> <p>2 and -- (interrupted)</p> <p>3 MR. BRAUNSTEIN:</p> <p>4 The question was what she said.</p> <p>5 A. She said no.</p> <p>6 MR. BRAUNSTEIN:</p> <p>7 Was that the question?</p> <p>8 MS. DAUGHERTY:</p> <p>9 Yes.</p> <p>10 A. I asked her -- she asked about the form.</p> <p>11 Q. What did she say to you? What was the</p> <p>12 reason given?</p> <p>13 A. No reason. That's why I was getting angry,</p> <p>14 she wasn't giving me a reason.</p> <p>15 Q. You showed her the form, you said show me on</p> <p>16 this form -- (interrupted)</p> <p>17 A. What your reasons are why you won't accept</p> <p>18 this return, Price Match. I don't want a</p> <p>19 return, I wanted the Price Match.</p> <p>20 Q. What did she say?</p> <p>21 A. She said we can't match the competitor's</p> <p>22 price.</p> <p>23 Q. And she didn't give you any reason</p> <p>24 whatsoever?</p> <p>25 A. No.</p>	<p>1 THOMAS JERMYN</p> <p>2 anything in writing in there, unless you can</p> <p>3 show me an asterisks or some fine print.</p> <p>4 Right away I knew I had a good case as soon</p> <p>5 as he said that.</p> <p>6 MR. BRAUNSTEIN:</p> <p>7 Talk about what he said.</p> <p>8 A. He just said major chains. I said I don't</p> <p>9 see major chains in here, show me.</p> <p>10 MS. DAUGHERTY:</p> <p>11 Q. The only reason that the manager gave you</p> <p>12 for not matching the price is the fact Best</p> <p>13 Buy only matched major chains?</p> <p>14 A. Yes.</p> <p>15 Q. That's the only thing?</p> <p>16 A. That's all he said.</p> <p>17 Q. After he said that, what did you do?</p> <p>18 A. I said okay, charge me the restocking fee,</p> <p>19 I'll go buy it over there, you will see me</p> <p>20 in court, I'm an attorney and they said, oh,</p> <p>21 we don't care.</p> <p>22 Q. Anything else they said?</p> <p>23 A. Then they just got nasty with me. Fine,</p> <p>24 didn't even offer me any kind of</p> <p>25 consideration, they just wanted me out of</p>

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<p>1 THOMAS JERMYN</p> <p>2 the store. It was like the voices were</p> <p>3 getting raised. It was almost like they</p> <p>4 were trying to quickly get me out of there.</p> <p>5 Nobody was saying a word and then it just --</p> <p>6 they weren't answering my question</p> <p>7 basically. I said okay, fine, let's pay the</p> <p>8 restocking fee. I added it up and it was --</p> <p>9 even with the restocking fee it was \$59</p> <p>10 less.</p> <p>11 MR. BRAUNSTEIN:</p> <p>12 Or 49.</p> <p>13 A. 59. So I didn't feel like making a big</p> <p>14 issue out of it after that.</p> <p>15 MS. DAUGHERTY:</p> <p>16 Q. There's no question before you right now,</p> <p>17 sir. Take a look at Exhibit C now.</p> <p>18 (Document submitted)</p> <p>19 A. Okay.</p> <p>20 Q. Do you recognize this document?</p> <p>21 A. Yes.</p> <p>22 Q. Tell me what this document is, please?</p> <p>23 A. This was the receipt for when I went in</p> <p>24 there on the 20th giving back the --</p> <p>25 returning the camera and the 15 percent</p>	<p>1 THOMAS JERMYN</p> <p>2 that you purchased the camera?</p> <p>3 A. No.</p> <p>4 Q. And have you been in the store since that</p> <p>5 date?</p> <p>6 A. I think I might have bought a lens cap there</p> <p>7 or lens cleaner, lens paper, some little</p> <p>8 things. It's a good store for that kind of</p> <p>9 stuff.</p> <p>10 Q. So since May 20th, 2005 you maybe have been</p> <p>11 in the store a couple of times?</p> <p>12 A. Yes.</p> <p>13 Q. Made a couple of small purchases?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether or not Tristate has a</p> <p>16 Price Match Policy?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Had you purchased anything at Tristate</p> <p>19 before purchasing the D70?</p> <p>20 A. Yes.</p> <p>21 MR. BRAUNSTEIN:</p> <p>22 Objection. Asked and answered. You</p> <p>23 can answer.</p> <p>24 A. Yes. Like I said, I think I might have</p> <p>25 bought a camera bag there, small things like</p>
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<p>1 THOMAS JERMYN</p> <p>2 restocking fee was charged to my account.</p> <p>3 Q. The net return then was \$1,107.96?</p> <p>4 A. Yes. Correct. I didn't bring back the</p> <p>5 battery.</p> <p>6 Q. Or the i-Trip?</p> <p>7 A. Yes.</p> <p>8 MS. DAUGHERTY:</p> <p>9 Off the record.</p> <p>10</p> <p>11 (OFF THE RECORD DISCUSSION)</p> <p>12</p> <p>13 Q. You then went to Tristate after Best Buy;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you purchased the camera, the same exact</p> <p>17 camera, D70 at Tristate?</p> <p>18 A. Yes.</p> <p>19 Q. You did not order the camera online?</p> <p>20 A. No.</p> <p>21 Q. From Tristate?</p> <p>22 A. No.</p> <p>23 Q. You just purchased it at the store?</p> <p>24 A. Yes.</p> <p>25 Q. Have you shopped at Tristate since the date</p>	<p>1 THOMAS JERMYN</p> <p>2 lens paper, like some lens cleaner, things</p> <p>3 like that. It's a good basic photography</p> <p>4 supply store.</p> <p>5 MS. DAUGHERTY:</p> <p>6 Q. Do you know the address of Tristate?</p> <p>7 A. Yes. It's at the corner of 20th and 6th</p> <p>8 Avenue, so there's two addresses. They have</p> <p>9 a 6th Avenue address and also a 20th Street</p> <p>10 address.</p> <p>11 Q. When you went into Tristate, did you take a</p> <p>12 copy of the online advertisement with you?</p> <p>13 A. No.</p> <p>14 Q. Did you ever see a copy of Exhibit B, which</p> <p>15 is a Tristate advertisement, in the Tristate</p> <p>16 store before you purchased that camera?</p> <p>17 A. No.</p> <p>18 Q. So the only place you saw that advertisement</p> <p>19 was online?</p> <p>20 A. Right.</p> <p>21 Q. And I believe you stated you thought that</p> <p>22 you spoke to the salesperson at Tristate</p> <p>23 about the prices online being the same as in</p> <p>24 the store?</p> <p>25 A. Yes.</p>

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<p>1 THOMAS JERMYN 2 just purchase it from the salesclerk? 3 A. Salesclerk. 4 Q. So if I understand what you told me, the 5 only time you spoke with a manager at Best 6 Buy in your three visits between May 13th 7 and May 20th was the very last time when you 8 attempted to return the camera; is that 9 correct? 10 A. Correct. 11 Q. Now, did you ever call Best Buy Customer 12 Service? 13 A. No. 14 Q. Did you ever escalate the problem to a 15 higher level other than talking to that 16 manager? I guess other than bringing this 17 lawsuit as well? 18 A. No. 19 Q. You understand what I'm asking, did you ask 20 to speak to additional management when you 21 were in there that day? 22 A. How many levels -- (interrupted) 23 MR. BRAUNSTEIN: 24 Listen to the question. 25 A. No. When they sent the first manager out</p>	<p>1 THOMAS JERMYN 2 MS. DAUGHERTY: 3 Q. You can't ask your attorney. Off the top of 4 your head right now -- (interrupted) 5 A. I know I have something written down, but I 6 don't have it with me. Simons I believe. 7 It was a woman's name. She wrote 1-888-Best 8 Buy. 9 Q. If we don't look at that document today, 10 I'll ask you to produce that to your 11 attorney. 12 A. Okay. 13 14 (REQUESTED INFORMATION HERE) 15 16 Q. Other than that name, do you have any names 17 of anyone else that you spoke with at Best 18 Buy during that period of time? 19 A. No. 20 Q. Do you agree that it would have been helpful 21 to get the names of the individuals that you 22 talked to who made oral representations to 23 you? 24 MR. BRAUNSTEIN: 25 Objection to the form. You can</p>
Page 111	Page 113
<p>1 THOMAS JERMYN 2 and he looked at me like I'm from Mars, I 3 didn't think I could go much further than 4 that. 5 MS. DAUGHERTY: 6 Q. Did you call any Best Buy corporate 7 telephone number to complain about this 8 situation? 9 A. No. 10 Q. Did you complain about this to any other 11 entities such as the Better Business Bureau? 12 A. No. 13 Q. Did you complain about it to the Department 14 of Commerce? 15 A. No. 16 Q. It's true that of all the people that you 17 spoke to in your three visits between May 18 13th and May 20th, you can't tell me the 19 names of any of these individuals; is that 20 right? 21 A. I have a name -- don't I have a name that 22 was written down in pencil? 23 MR. BRAUNSTEIN: 24 You can't ask me. 25</p>	<p>1 THOMAS JERMYN 2 answer. 3 A. Yes. 4 MS. DAUGHERTY: 5 Q. Why did you not do that? 6 A. I think I did. In fact, I remember asking 7 and no one wanted to give me their name. It 8 was one thing after another when I was in 9 the store. It was a total insult to my 10 intelligence -- (interrupted) 11 MR. BRAUNSTEIN: 12 Answer the question. 13 MS. DAUGHERTY: 14 Q. Is the answer yes or no? 15 A. Yes. 16 Q. You did get other names? 17 A. No, I tried to get names, but I didn't get 18 any names. 19 Q. You have been to Best Buy on a number of 20 occasions? 21 A. Yes. 22 Q. Are you aware Best Buy personnel employees 23 wear name badges? 24 A. I don't remember seeing anyone with a name 25 badge.</p>

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<p>1 THOMAS JERMYN</p> <p>2 say that? I kept focusing on that and they</p> <p>3 wouldn't listen to me. I got angry and I</p> <p>4 don't remember if they threatened to take me</p> <p>5 out of the store or call the cops on me, but</p> <p>6 I realized I might leave the store.</p> <p>7 Q. Did you raise your voice in anger?</p> <p>8 A. Yes, definitely.</p> <p>9 Q. You mentioned "they" many times. From what</p> <p>10 you've told me, you spoke with one person at</p> <p>11 the customer service desk and then --</p> <p>12 (interrupted)</p> <p>13 A. There were other people gathering around --</p> <p>14 (interrupted)</p> <p>15 Q. There's no question pending yet. I have to</p> <p>16 ask it in its entirety. In addition to the</p> <p>17 one person at the customer service desk, you</p> <p>18 told me you spoke to a manager. Is there</p> <p>19 anybody else that you spoke to that day at</p> <p>20 Best Buy?</p> <p>21 A. By the time I left it seemed like there were</p> <p>22 five people on the other side of that table.</p> <p>23 From the clerk to the salesperson maybe, I</p> <p>24 didn't -- it all kind of blended together.</p> <p>25 I don't recall who specifically the</p>	<p>1 THOMAS JERMYN</p> <p>2 did any of them say anything to you?</p> <p>3 A. No.</p> <p>4 Q. They just stood there and watched?</p> <p>5 A. Stood there and watched. It was almost like</p> <p>6 they were trained.</p> <p>7 MS. DAUGHERTY:</p> <p>8 Off the record.</p> <p>9</p> <p>10 (OFF THE RECORD DISCUSSION)</p> <p>11</p> <p>12 Q. You mentioned that you just said it was like</p> <p>13 they were trained and you mentioned saying</p> <p>14 this seemed like a conspiracy. Do you</p> <p>15 remember saying that?</p> <p>16 A. Yes.</p> <p>17 Q. You have no evidence that there was any type</p> <p>18 of conspiracy going on at Best Buy, do you?</p> <p>19 MR. BRAUNSTEIN:</p> <p>20 Objection to the form. You can</p> <p>21 answer.</p> <p>22 A. No. It was just odd that nobody was</p> <p>23 answering my questions and it was just</p> <p>24 silence, silence, silence and it took about</p> <p>25 five minutes for the guy to come out. It</p>
Page 119	Page 121
<p>1 THOMAS JERMYN</p> <p>2 salesperson was.</p> <p>3 MR. BRAUNSTEIN:</p> <p>4 We are talking about May 20th now.</p> <p>5 A. When I left the store it could have been the</p> <p>6 person that sold me the camera, could have</p> <p>7 been the cashier, could have been the</p> <p>8 customer service person. There were like</p> <p>9 four or five people, including the manager</p> <p>10 on the other side of the table against me.</p> <p>11 I was trying to get my point across, it</p> <p>12 wasn't just one person. Nobody was really</p> <p>13 saying anything.</p> <p>14 MS. DAUGHERTY:</p> <p>15 Q. Did any other person -- (interrupted)</p> <p>16 A. Was there any other person that I remember?</p> <p>17 No, it was just they were categorically</p> <p>18 denying everything I said. He said no, we</p> <p>19 don't honor this here, we only honor major</p> <p>20 chains. I was trying to get at what do you</p> <p>21 define as a major chain? What's a major</p> <p>22 chain, what's a major chain and nobody</p> <p>23 answered me.</p> <p>24 Q. When you said there were multiple people</p> <p>25 gathering behind this customer service desk,</p>	<p>1 THOMAS JERMYN</p> <p>2 was just like I said, as if they were</p> <p>3 observing some protocol for this type of</p> <p>4 situation because nobody would say a word to</p> <p>5 me. You would think in most situations a</p> <p>6 staff member of the store would try to calm</p> <p>7 down an irate customer.</p> <p>8 MS. DAUGHERTY:</p> <p>9 Q. Would you agree you were irate?</p> <p>10 A. Yes.</p> <p>11 Q. When the manager came, you said you were</p> <p>12 describing how you demanded more explanation</p> <p>13 and he said nothing?</p> <p>14 A. Right.</p> <p>15 Q. For the first couple times is what I</p> <p>16 understand?</p> <p>17 A. Yes.</p> <p>18 Q. Was he just quiet?</p> <p>19 A. Yeah. He just listened to me. He made me</p> <p>20 state my case. I said it succinctly that I</p> <p>21 bought the camera here, here is your Price</p> <p>22 Match Guarantee, please match it, I found</p> <p>23 this at Tristate. I'd love to be your</p> <p>24 customer, can you do this for me and he said</p> <p>25 no, we can't do that.</p>

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<p>1 THOMAS JERMYN</p> <p>2 Q. That's when you asked for an explanation?</p> <p>3 A. Yes.</p> <p>4 Q. And he just stood there and looked at you?</p> <p>5 A. Yes. Look at this, we matched this, here is</p> <p>6 the ad you need, why can't you do this.</p> <p>7 Q. Other than him saying to you, no, we don't</p> <p>8 do it or in some way saying that and telling</p> <p>9 you that it's because Best Buy only matches</p> <p>10 retail chains, do you remember --</p> <p>11 (interrupted)</p> <p>12 MR. BRAUNSTEIN:</p> <p>13 Major chains.</p> <p>14 MS. DAUGHERTY:</p> <p>15 Sorry.</p> <p>16 Q. Major chains, do you remember anything else</p> <p>17 specifically that this manager said to you?</p> <p>18 A. No. Other than just go ahead, sue us,</p> <p>19 things like that.</p> <p>20 Q. Do you personally -- other than the blogs</p> <p>21 you read, and I'm talking personally, do you</p> <p>22 know someone who tried to get the benefit of</p> <p>23 Best Buy's Price Match?</p> <p>24 A. No.</p> <p>25 Q. When I say that, I mean either successfully</p>	<p>1 THOMAS JERMYN</p> <p>2 A. No.</p> <p>3 Q. Unless they were answering a question that</p> <p>4 you posed, that you already described to me?</p> <p>5 MR. BRAUNSTEIN:</p> <p>6 Other than previous testimony?</p> <p>7 MS. DAUGHERTY:</p> <p>8 Right.</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever read the Price Match Policy in</p> <p>11 full?</p> <p>12 A. Yes.</p> <p>13 Q. Your testimony is that you understood the</p> <p>14 Price Match Policy?</p> <p>15 A. Yes.</p> <p>16 Q. To the best of your knowledge?</p> <p>17 A. Yes, sure, yeah.</p> <p>18 MS. DAUGHERTY:</p> <p>19 Mark this.</p> <p>20</p> <p>21 (PRICE MATCH GUARANTEE WAS RECEIVED</p> <p>22 AND MARKED AS DEFENDANT'S EXHIBIT E</p> <p>23 FOR IDENTIFICATION)</p> <p>24</p> <p>25 Q. Sir, showing you what has been marked as</p>
Page 123	Page 125
<p>1 THOMAS JERMYN</p> <p>2 got the benefit of the Price Match meaning</p> <p>3 it worked or had a situation wherein they</p> <p>4 were denied the benefit of Price Match, you</p> <p>5 don't know anyone?</p> <p>6 A. No, either one.</p> <p>7 Q. You never wrote any letters or e-mails to</p> <p>8 Best Buy or any other entities complaining</p> <p>9 of this?</p> <p>10 A. No.</p> <p>11 Q. It's your testimony that you thought it was</p> <p>12 sufficient to go to the manager and I think</p> <p>13 you said you wouldn't get anywhere if you</p> <p>14 called or took it to a higher level?</p> <p>15 A. Right.</p> <p>16 Q. You had a copy of the Best Buy Price Match</p> <p>17 Policy and I believe that's what you took in</p> <p>18 on May 20th; is that right?</p> <p>19 A. The copy that you mentioned, yeah. It</p> <p>20 wasn't the 20th, it was before that. That I</p> <p>21 brought in?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. Did anybody explain the Price Match Policy</p> <p>25 to you in terms of what it covered?</p>	<p>1 THOMAS JERMYN</p> <p>2 Defendant's Exhibit E. Take a moment to</p> <p>3 review that document.</p> <p>4 (Document submitted)</p> <p>5 A. Okay.</p> <p>6 Q. Do you know what that is?</p> <p>7 A. Yes.</p> <p>8 Q. What is that document?</p> <p>9 A. Price Guarantee Customer FAQs.</p> <p>10 Q. Is this a copy of the Price Match Policy you</p> <p>11 had in your possession that you brought into</p> <p>12 Best Buy on May 20th?</p> <p>13 A. I'm not sure because I think the one that I</p> <p>14 had might have been in color. It was</p> <p>15 different kind of paper, but I'm not sure.</p> <p>16 It says basically the same thing.</p> <p>17 Q. There's some handwriting at the bottom. Do</p> <p>18 you see that?</p> <p>19 A. Yes.</p> <p>20 Q. There's a name?</p> <p>21 A. Yes.</p> <p>22 Q. Is that your handwriting?</p> <p>23 A. No.</p> <p>24 Q. The name -- I don't know what this first</p> <p>25 name is, starts with a G?</p>

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<p style="text-align: right;">Page 130</p> <p>1 THOMAS JERMYN</p> <p>2 feel like pursuing anything with Best Buy.</p> <p>3 I didn't want to ever utter the name again</p> <p>4 after what I went through.</p> <p>5 Q. To the best of your recollection, you got</p> <p>6 this document after May 20th, 2005 or you</p> <p>7 had the name written on the document after</p> <p>8 May 20th, 2005?</p> <p>9 A. Yes.</p> <p>10 Q. You just said, sir, you didn't want to hear</p> <p>11 the name Best Buy again, you didn't feel it</p> <p>12 would be useful at all to follow up on this.</p> <p>13 Why didn't you go into the store to get this</p> <p>14 person's name?</p> <p>15 A. I'm not sure what my rationale was at that</p> <p>16 time. I might have been trying to pursue it</p> <p>17 or thinking I might want to do something on</p> <p>18 it. It was sitting on my desk and I made a</p> <p>19 few calls. Until these guys came along it</p> <p>20 wasn't really going anywhere. The camera</p> <p>21 worked. I kind of put it behind me after a</p> <p>22 little while.</p> <p>23 Q. Is it fair to say earlier in your testimony</p> <p>24 you didn't follow up with any person higher</p> <p>25 than management at Best Buy with regard to</p>	<p style="text-align: right;">Page 132</p> <p>1 THOMAS JERMYN</p> <p>2 MR. BRAUNSTEIN:</p> <p>3 Listen to the question.</p> <p>4 MS. DAUGHERTY:</p> <p>5 Q. You don't know whether or not you went back</p> <p>6 into the 23rd Street store, the Chelsea</p> <p>7 store at any time after May 20th until let's</p> <p>8 say the rest of the year?</p> <p>9 A. I'm not sure.</p> <p>10 Q. In any event, you did not call this 1-888</p> <p>11 number?</p> <p>12 A. No. If I did anything, I just went online.</p> <p>13 MR. BRAUNSTEIN:</p> <p>14 Listen to the question. The question</p> <p>15 is did you call this number?</p> <p>16 THE WITNESS:</p> <p>17 No.</p> <p>18 MR. BRAUNSTEIN:</p> <p>19 Listen to the question and answer the</p> <p>20 question.</p> <p>21 MS. DAUGHERTY:</p> <p>22 Q. This is the version of the Price Match</p> <p>23 Policy that you think Best Buy violated?</p> <p>24 MR. BRAUNSTEIN:</p> <p>25 Object to the form, but you can answer</p>
<p style="text-align: right;">Page 131</p> <p>1 THOMAS JERMYN</p> <p>2 this incident?</p> <p>3 A. Yes.</p> <p>4 Q. It's true at some point after May 20th you</p> <p>5 went into a Best Buy store; right?</p> <p>6 A. No.</p> <p>7 MR. BRAUNSTEIN:</p> <p>8 Listen to the question.</p> <p>9 A. I'm not sure.</p> <p>10 MS. DAUGHERTY:</p> <p>11 Q. You don't know if you went into a Best Buy</p> <p>12 store?</p> <p>13 A. This could have been done on the 20th. It</p> <p>14 could have been done the moment before I</p> <p>15 blew up or when somebody put their name on</p> <p>16 here. I don't remember. I just see</p> <p>17 someone's name on there. They are not in</p> <p>18 the habit of putting their name -- I</p> <p>19 remember asking somebody their name</p> <p>20 throughout this entire ordeal. I don't</p> <p>21 remember if I ever went back into the 23rd</p> <p>22 Street store. It might have been on the</p> <p>23 20th when I did this. I'm not exactly sure</p> <p>24 though.</p> <p>25</p>	<p style="text-align: right;">Page 133</p> <p>1 THOMAS JERMYN</p> <p>2 over objection.</p> <p>3 A. Yes.</p> <p>4 MS. DAUGHERTY:</p> <p>5 Q. As a class representative of this class</p> <p>6 action, this is the substance of the policy</p> <p>7 that you believe was violated?</p> <p>8 MR. BRAUNSTEIN:</p> <p>9 Same Objection. You can answer.</p> <p>10 A. Yes.</p> <p>11 MS. DAUGHERTY:</p> <p>12 Q. I'm going to go ahead and have you look</p> <p>13 through this document. If you need a</p> <p>14 minute, that's fine. Tell me if you see</p> <p>15 anything relating to online price matching.</p> <p>16 A. I don't see anything that says anything</p> <p>17 about online price matching. Oh, yeah, it</p> <p>18 says -- no, that says processed online.</p> <p>19 Q. Other than that, sir, anything else that you</p> <p>20 see relating that mentioned online price</p> <p>21 matching?</p> <p>22 A. No.</p> <p>23 Q. I'll represent to you that Exhibit E and</p> <p>24 what we will mark as Exhibits F and G were</p> <p>25 sent to me as one exhibit, as one document.</p>

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<p>1 THOMAS JERMYN</p> <p>2 Q. Were you satisfied with the products you</p> <p>3 purchased at Best Buy?</p> <p>4 A. Yes.</p> <p>5 Q. Other than CDs, what types of products have</p> <p>6 you purchased at Best Buy?</p> <p>7 A. Maybe like a stereo, maybe a card for a</p> <p>8 camera.</p> <p>9 Q. Had you ever returned anything to Best Buy?</p> <p>10 A. No.</p> <p>11 Q. Never before?</p> <p>12 A. No.</p> <p>13 Q. The first product you ever returned to Best</p> <p>14 Buy was this Nikon camera?</p> <p>15 A. Yes.</p> <p>16 Q. So obviously then would it be fair to say</p> <p>17 you've already been satisfied with your</p> <p>18 purchases from Best Buy?</p> <p>19 A. Yes.</p> <p>20 Q. Have you stepped foot in a Best Buy store</p> <p>21 since May 2005?</p> <p>22 MR. BRAUNSTEIN:</p> <p>23 Other than what he may have testified</p> <p>24 to already?</p> <p>25</p>	<p>1 THOMAS JERMYN</p> <p>2 Q. Where else do you shop for electronics now?</p> <p>3 A. PC Richards, J&R Music. That's about it.</p> <p>4 Q. You have never -- (interrupted)</p> <p>5 A. Oh, Wal-Mart.</p> <p>6 Q. Do you know whether any of those stores has</p> <p>7 a Price Match Guarantee?</p> <p>8 A. Wal-Mart does.</p> <p>9 Q. You have never tried to utilize that though?</p> <p>10 A. No.</p> <p>11 Q. Ever been a member of Best Buy's Reward</p> <p>12 Zone?</p> <p>13 A. No.</p> <p>14 Q. We have looked at a number of exhibits</p> <p>15 today. Do you have anything else in your</p> <p>16 possession relating to the May 2005</p> <p>17 transaction?</p> <p>18 A. No.</p> <p>19 Q. Have you reviewed Best Buy's document</p> <p>20 requests?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know of any other documents that you</p> <p>23 may have in your possession that are</p> <p>24 responsive to those document requests that</p> <p>25 you have not provided to your attorney?</p>
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<p>1 THOMAS JERMYN</p> <p>2 MS. DAUGHERTY:</p> <p>3 Yes, other than what he may have</p> <p>4 testified to that was in connection with</p> <p>5 this particular incident. I know he said he</p> <p>6 might have gone back to get the name.</p> <p>7 A. No.</p> <p>8 Q. Other than in either May 2005 or after to</p> <p>9 get the name of Miss Simons, you haven't</p> <p>10 stepped foot in a Best Buy store?</p> <p>11 A. No.</p> <p>12 Q. Have you ever purchased anything from a Best</p> <p>13 Buy?</p> <p>14 A. Yes.</p> <p>15 Q. I'm sorry, since May 2005?</p> <p>16 A. No.</p> <p>17 Q. How about online from Best Buy?</p> <p>18 A. No.</p> <p>19 Q. Do you plan to shop at Best Buy again in the</p> <p>20 future?</p> <p>21 A. No.</p> <p>22 Q. Do you have family that shops at Best Buy?</p> <p>23 A. No.</p> <p>24 Q. Did they before this incident?</p> <p>25 A. Yes.</p>	<p>1 THOMAS JERMYN</p> <p>2 A. No.</p> <p>3 Q. How would you define yourself, the class of</p> <p>4 persons you hope to represent in this case?</p> <p>5 A. People that have depended on and relied upon</p> <p>6 Best Buy's representation for being a low</p> <p>7 price electronics and equipment vender and</p> <p>8 gone in there and been stuck and been in the</p> <p>9 same position and situation that I'm in by</p> <p>10 buying something and thinking they are</p> <p>11 getting the lowest price and I would like to</p> <p>12 prevent that so people know maybe they</p> <p>13 should shop around before they buy at Best</p> <p>14 Buy. And if they have been refused like me</p> <p>15 and had to pay the restocking fee, then they</p> <p>16 should be compensated for that.</p> <p>17 Q. So the class of persons you hope to</p> <p>18 represent have been affected in some way by</p> <p>19 the Price Match Policy?</p> <p>20 A. The failure to honor it.</p> <p>21 Q. When is the time last -- when was the time</p> <p>22 frame --</p> <p>23 MS. DAUGHERTY:</p> <p>24 Strike that.</p> <p>25 Q. What is the time frame in which the class of</p>

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<p>1 THOMAS JERMYN</p> <p>2 you -- let's say for some reason they were</p> <p>3 denied so they never ended up purchasing</p> <p>4 from Best Buy?</p> <p>5 MR. BRAUNSTEIN:</p> <p>6 Hold on. Off the record.</p> <p>7</p> <p>8 (OFF THE RECORD DISCUSSION)</p> <p>9</p> <p>10 MS. DAUGHERTY:</p> <p>11 I will withdraw the last question.</p> <p>12 Q. You are talking about people that would</p> <p>13 bring in an advertisement to Best Buy --</p> <p>14 (interrupted)</p> <p>15 A. Say there's a TV -- (interrupted)</p> <p>16 MR. BRAUNSTEIN:</p> <p>17 Let her ask the question.</p> <p>18 MS. DAUGHERTY:</p> <p>19 Q. An employee would say this would not be</p> <p>20 valid for the Price Match so they never</p> <p>21 ended up purchasing from Best Buy?</p> <p>22 A. Yes.</p> <p>23 Q. And those are the people that you feel</p> <p>24 should be in the class, yes or no?</p> <p>25 A. Yes.</p>	<p>1 THOMAS JERMYN</p> <p>2 MR. BRAUNSTEIN:</p> <p>3 Object to the form. You can answer.</p> <p>4 MS. DAUGHERTY:</p> <p>5 Q. Right?</p> <p>6 A. Yes.</p> <p>7 Q. So you would agree with me that it could be</p> <p>8 based on what you said you were told because</p> <p>9 Best Buy only matches major chains?</p> <p>10 A. According to what they told me, yes.</p> <p>11 Q. You agreed that there could be denials of</p> <p>12 the Price Match Policy because of the time</p> <p>13 frame, thirty days or fourteen days?</p> <p>14 A. Yes.</p> <p>15 Q. You would agree with me that there could be</p> <p>16 other denials of the Price Match Policy</p> <p>17 because the product was purchased online at</p> <p>18 a certain time?</p> <p>19 A. Yes.</p> <p>20 Q. And you also agree with me when we looked at</p> <p>21 these Price Match versions in Exhibits E and</p> <p>22 F they differ?</p> <p>23 A. Right.</p> <p>24 Q. And are you aware whether or not Best Buy</p> <p>25 changed its Price Match Policy at all in</p>
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<p>1 THOMAS JERMYN</p> <p>2 Q. I believe you said that there are a lot of</p> <p>3 difference with circumstances and the Best</p> <p>4 Buy match; right?</p> <p>5 A. Gift cards, things like that.</p> <p>6 MR. BRAUNSTEIN:</p> <p>7 Objection to the form. You can</p> <p>8 answer.</p> <p>9 A. Gift cards, thing like that.</p> <p>10 MS. DAUGHERTY:</p> <p>11 Q. In somebody else's case there could have</p> <p>12 been gift cards, rebate issues?</p> <p>13 A. Yes.</p> <p>14 Q. They could have purchased the product like</p> <p>15 you?</p> <p>16 A. Yes.</p> <p>17 Q. And there's people that you said that didn't</p> <p>18 end up purchasing the product because they</p> <p>19 brought in an ad and Best Buy said they</p> <p>20 wouldn't match it for one reason or another;</p> <p>21 right?</p> <p>22 A. Right.</p> <p>23 Q. You would agree with me too that there could</p> <p>24 be a variety of reasons why a Price Match</p> <p>25 was not met; right?</p>	<p>1 THOMAS JERMYN</p> <p>2 that period of time?</p> <p>3 A. I'm not aware of that.</p> <p>4 Q. So we have talked about a number of factors.</p> <p>5 You agree with me that there's a lot of</p> <p>6 different circumstances?</p> <p>7 A. Yes.</p> <p>8 Q. And your class would take account for all of</p> <p>9 these different circumstances; right?</p> <p>10 A. If it would become burdensome, no. We would</p> <p>11 limit it to the people that just got charged</p> <p>12 the restocking fee.</p> <p>13 Q. Your testimony is that all of these people</p> <p>14 should be included?</p> <p>15 A. Yes.</p> <p>16 Q. You realize there's all these different</p> <p>17 circumstances such as different reasons to</p> <p>18 be denied the Price Match Policy?</p> <p>19 A. Yes.</p> <p>20 Q. Different advertisements, you realize people</p> <p>21 could bring in different advertisements from</p> <p>22 different stores?</p> <p>23 A. Yes.</p> <p>24 Q. You realize people could bring in</p> <p>25 advertisements from other stores, but they</p>

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THOMAS JERMYN, MAY 2, 2008

<p style="text-align: right;">Page 162</p> <p>1 THOMAS JERMYN</p> <p>2 could get the Price Match Policy with an</p> <p>3 online ad?</p> <p>4 A. Yes.</p> <p>5 Q. As a plaintiff you would represent all these</p> <p>6 people?</p> <p>7 A. Yes.</p> <p>8 Q. You mentioned that you travel to Florida and</p> <p>9 South Carolina for work?</p> <p>10 A. Yes.</p> <p>11 Q. You understand that if your class is</p> <p>12 certified that it will be in litigation</p> <p>13 venued here in the Southern District of New</p> <p>14 York?</p> <p>15 A. Yes.</p> <p>16 Q. You realize that there is time commitments</p> <p>17 associated with that?</p> <p>18 A. Yes.</p> <p>19 Q. With the time commitment that you have with</p> <p>20 your job and travel you would be able to</p> <p>21 accommodate that?</p> <p>22 A. Yes.</p> <p>23 Q. Why else do you think you are qualified to</p> <p>24 be the class representative?</p> <p>25 A. I'm an attorney. I have twenty years of</p>	<p style="text-align: right;">Page 164</p> <p>1 THOMAS JERMYN</p> <p>2 likely do not have any paper documentation</p> <p>3 with Best Buy because they never purchased</p> <p>4 anything at Best Buy?</p> <p>5 A. Yes.</p> <p>6 Q. You would agree it would be hard to quantify</p> <p>7 the damages that those people suffered?</p> <p>8 A. Right.</p> <p>9 Q. Would you agree then that in that situation</p> <p>10 it would perhaps be difficult to group them</p> <p>11 with other situations such as yours?</p> <p>12 A. Yes.</p> <p>13 MR. BRAUNSTEIN:</p> <p>14 October to the form.</p> <p>15 MS. DAUGHERTY:</p> <p>16 Q. You had testified earlier about various oral</p> <p>17 representations made to you by Best Buy</p> <p>18 personnel?</p> <p>19 A. Yes.</p> <p>20 Q. You would agree with me that the same oral</p> <p>21 representations that were made to you are</p> <p>22 very likely not the exact same</p> <p>23 representations word for word that were made</p> <p>24 for someone else?</p> <p>25</p>
<p style="text-align: right;">Page 163</p> <p>1 THOMAS JERMYN</p> <p>2 experience and I'm uniquely situated that I</p> <p>3 was wronged by Best Buy so I can understand</p> <p>4 the way the company treats people in my</p> <p>5 situation and I'll be a good advocate in</p> <p>6 their behalf.</p> <p>7 Q. It's fair to say you are not involved in</p> <p>8 consumer litigation?</p> <p>9 A. Correct.</p> <p>10 Q. How would your class involve those people</p> <p>11 who came into Best Buy with an ad and were</p> <p>12 turned away from some reason saying that the</p> <p>13 Price Match Policy would not be a benefit?</p> <p>14 MR. BRAUNSTEIN:</p> <p>15 Object to the form.</p> <p>16 MS. DAUGHERTY:</p> <p>17 I didn't complete the question. Let</p> <p>18 me start over.</p> <p>19 Q. You did say, correct me if I'm wrong, you</p> <p>20 did say your class could include people that</p> <p>21 come into Best Buy with an advertisement and</p> <p>22 they would say that the Price Match</p> <p>23 Guarantee would not apply; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. And you would agree then that those people</p>	<p style="text-align: right;">Page 165</p> <p>1 THOMAS JERMYN</p> <p>2 MR. BRAUNSTEIN:</p> <p>3 Objection to the form. Calls for</p> <p>4 speculation. You can answer over objection.</p> <p>5 A. Hard to tell. I have no way of knowing.</p> <p>6 MS. DAUGHERTY:</p> <p>7 Q. Are you aware of a secret intranet site that</p> <p>8 Best Buy operates?</p> <p>9 A. I read about that.</p> <p>10 Q. Tell me what you know about that?</p> <p>11 A. They would have one website in the stores</p> <p>12 running that was a mirror, like a copy so</p> <p>13 people would look on it and it was different</p> <p>14 from the actual internet site and it had</p> <p>15 different prices. I don't know if they had</p> <p>16 to pay damages on that. It was misleading</p> <p>17 to the consumer. My attorney uncovered</p> <p>18 something on that, about that, and I read</p> <p>19 about it in the attachments to the complaint</p> <p>20 or the interrogatories.</p> <p>21 Q. It's true that you do not have a separate</p> <p>22 cause of action in your complaint and you're</p> <p>23 not alleging a separate cause of action</p> <p>24 based on any type of violation or anything</p> <p>25 with regard to this secret intranet site;</p>

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EXHIBIT NO. 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X
THOMAS JERMYN, on behalf of himself	:
and all others similarly situated,	: CIVIL ACTION NO. 08 CV 00214
	:
Plaintiff,	: ECF ACTION
	:
-against-	: DECLARATION OF
	: JENNIFER G. DAUGHERTY
BEST BUY STORES, L.P.,	: IN SUPPORT OF BEST BUY STORES,
	: L.P.'S MEMORANDUM OF LAW
Defendant.	: IN OPPOSITION TO PLAINTIFF'S
	: MOTION FOR CLASS CERTIFICATION
	: FILED UNDER SEAL
-----	X

EXHIBIT 2

**CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER
CASE NO. 08-CV-00214
(JUDGE COLLEEN MCMAHON)
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CONTENTS THEREOF DISPLAYED, COPIED OR REVEALED**

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CERTIFICATE OF SERVICE

Case Name: **THOMAS JERMYN**, on behalf of himself and all others similarly situated v.
BEST BUY STORES, L.P.

Court File No: **08-00214**

I hereby certify that on June 26, 2008, I electronically filed the foregoing documents: DECLARATION OF JENNIFER G. DAUGHERTY, with EXHIBIT 1, AND EXHIBIT 2 (Filed Under Seal), IN SUPPORT OF DEFENDANT BEST BUY STORES, L.P.'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION (Filed Under Seal), and this Certificate of Service with the Clerk of Court using the CM/ECF System, which shall send notification of such filing to the following:

Gary S. Graifman	ggraifman@kgglaw.com
Todd C. Norbitz	tnorbitz@foley.com

In addition, the preceding documents were served in their entirety via electronic email and first-class mail this 26th day of June upon the following:

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s/ Jennifer G. Daugherty
Jennifer G. Daugherty